

SSB 5487 - S AMD 122
By Senator Padden

NOT CONSIDERED 12/23/2019

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature recognizes there are
4 instances where individuals with disabilities are excluded from
5 participating in activities or events in places of public resort,
6 accommodation, assemblage, or amusement. The legislature further
7 recognizes that an individual with a disability may require the use
8 of a personal caregiver or personal care attendant. In recognition of
9 the merits of the United States District Court for the Eastern
10 District of Pennsylvania's ruling in *Anderson v. Franklin Institute*,
11 185 F. Supp. 3d 628 (E.D. Pa. 2016), the legislature intends to
12 provide individuals with disabilities who use a personal caregiver or
13 personal care attendant with full and equal access to places of
14 public resort, accommodation, assemblage, or amusement.

15 **Sec. 2.** RCW 49.60.040 and 2018 c 176 s 2 are each amended to
16 read as follows:

17 The definitions in this section apply throughout this chapter
18 unless the context clearly requires otherwise.

19 (1) "Aggrieved person" means any person who: (a) Claims to have
20 been injured by an unfair practice in a real estate transaction; or
21 (b) believes that he or she will be injured by an unfair practice in
22 a real estate transaction that is about to occur.

23 (2) "Any place of public resort, accommodation, assemblage, or
24 amusement" includes, but is not limited to, any place, licensed or
25 unlicensed, kept for gain, hire, or reward, or where charges are made
26 for admission, service, occupancy, or use of any property or
27 facilities, whether conducted for the entertainment, housing, or
28 lodging of transient guests, or for the benefit, use, or
29 accommodation of those seeking health, recreation, or rest, or for
30 the burial or other disposition of human remains, or for the sale of
31 goods, merchandise, services, or personal property, or for the

1 rendering of personal services, or for public conveyance or
2 transportation on land, water, or in the air, including the stations
3 and terminals thereof and the garaging of vehicles, or where food or
4 beverages of any kind are sold for consumption on the premises, or
5 where public amusement, entertainment, sports, or recreation of any
6 kind is offered with or without charge, or where medical service or
7 care is made available, or where the public gathers, congregates, or
8 assembles for amusement, recreation, or public purposes, or public
9 halls, public elevators, and public washrooms of buildings and
10 structures occupied by two or more tenants, or by the owner and one
11 or more tenants, or any public library or educational institution, or
12 schools of special instruction, or nursery schools, or day care
13 centers or children's camps: PROVIDED, That nothing contained in this
14 definition shall be construed to include or apply to any institute,
15 bona fide club, or place of accommodation, which is by its nature
16 distinctly private, including fraternal organizations, though where
17 public use is permitted that use shall be covered by this chapter;
18 nor shall anything contained in this definition apply to any
19 educational facility, columbarium, crematory, mausoleum, or cemetery
20 operated or maintained by a bona fide religious or sectarian
21 institution.

22 (3) "Basic activities of daily living" means self-care abilities
23 such as bathing, body care, eating, locomotion, use of the toilet,
24 personal hygiene, dressing, and transfer.

25 (4) "Caregiver" means a person who provides a person with
26 disability assistance with basic activities of daily living and whose
27 presence is required for a person with a disability to attend a
28 public event or patronize a place of public resort, accommodation,
29 assemblage, or amusement.

30 (5) "Commission" means the Washington state human rights
31 commission.

32 ~~((4))~~ (6) "Complainant" means the person who files a complaint
33 in a real estate transaction.

34 ~~((5))~~ (7) "Covered multifamily dwelling" means: (a) Buildings
35 consisting of four or more dwelling units if such buildings have one
36 or more elevators; and (b) ground floor dwelling units in other
37 buildings consisting of four or more dwelling units.

38 ~~((6))~~ (8) "Credit transaction" includes any open or closed end
39 credit transaction, whether in the nature of a loan, retail
40 installment transaction, credit card issue or charge, or otherwise,

1 and whether for personal or for business purposes, in which a
2 service, finance, or interest charge is imposed, or which provides
3 for repayment in scheduled payments, when such credit is extended in
4 the regular course of any trade or commerce, including but not
5 limited to transactions by banks, savings and loan associations or
6 other financial lending institutions of whatever nature, stock
7 brokers, or by a merchant or mercantile establishment which as part
8 of its ordinary business permits or provides that payment for
9 purchases of property or service therefrom may be deferred.

10 ((+7)) (9)(a) "Disability" means the presence of a sensory,
11 mental, or physical impairment that:

12 (i) Is medically cognizable or diagnosable; or

13 (ii) Exists as a record or history; or

14 (iii) Is perceived to exist whether or not it exists in fact.

15 (b) A disability exists whether it is temporary or permanent,
16 common or uncommon, mitigated or unmitigated, or whether or not it
17 limits the ability to work generally or work at a particular job or
18 whether or not it limits any other activity within the scope of this
19 chapter.

20 (c) For purposes of this definition, "impairment" includes, but
21 is not limited to:

22 (i) Any physiological disorder, or condition, cosmetic
23 disfigurement, or anatomical loss affecting one or more of the
24 following body systems: Neurological, musculoskeletal, special sense
25 organs, respiratory, including speech organs, cardiovascular,
26 reproductive, digestive, ((genitor-urinary)) genitourinary, hemic and
27 lymphatic, skin, and endocrine; or

28 (ii) Any mental, developmental, traumatic, or psychological
29 disorder, including but not limited to cognitive limitation, organic
30 brain syndrome, emotional or mental illness, and specific learning
31 disabilities.

32 (d) Only for the purposes of qualifying for reasonable
33 accommodation in employment, an impairment must be known or shown
34 through an interactive process to exist in fact and:

35 (i) The impairment must have a substantially limiting effect upon
36 the individual's ability to perform his or her job, the individual's
37 ability to apply or be considered for a job, or the individual's
38 access to equal benefits, privileges, or terms or conditions of
39 employment; or

1 (ii) The employee must have put the employer on notice of the
2 existence of an impairment, and medical documentation must establish
3 a reasonable likelihood that engaging in job functions without an
4 accommodation would aggravate the impairment to the extent that it
5 would create a substantially limiting effect.

6 (e) For purposes of (d) of this subsection, a limitation is not
7 substantial if it has only a trivial effect.

8 ~~((8))~~ (10) "Dog guide" means a dog that is trained for the
9 purpose of guiding blind persons or a dog that is trained for the
10 purpose of assisting hearing impaired persons.

11 ~~((9))~~ (11) "Dwelling" means any building, structure, or portion
12 thereof that is occupied as, or designed or intended for occupancy
13 as, a residence by one or more families, and any vacant land that is
14 offered for sale or lease for the construction or location thereon of
15 any such building, structure, or portion thereof.

16 ~~((10))~~ (12) "Employee" does not include any individual employed
17 by his or her parents, spouse, or child, or in the domestic service
18 of any person.

19 ~~((11))~~ (13) "Employer" includes any person acting in the
20 interest of an employer, directly or indirectly, who employs eight or
21 more persons, and does not include any religious or sectarian
22 organization not organized for private profit.

23 ~~((12))~~ (14) "Employment agency" includes any person undertaking
24 with or without compensation to recruit, procure, refer, or place
25 employees for an employer.

26 ~~((13))~~ (15) "Families with children status" means one or more
27 individuals who have not attained the age of eighteen years being
28 domiciled with a parent or another person having legal custody of
29 such individual or individuals, or with the designee of such parent
30 or other person having such legal custody, with the written
31 permission of such parent or other person. Families with children
32 status also applies to any person who is pregnant or is in the
33 process of securing legal custody of any individual who has not
34 attained the age of eighteen years.

35 ~~((14))~~ (16) "Full enjoyment of" includes the right to purchase
36 any service, commodity, or article of personal property offered or
37 sold on, or by, any establishment to the public, and the admission of
38 any person to accommodations, advantages, facilities, or privileges
39 of any place of public resort, accommodation, assemblage, or
40 amusement, without acts directly or indirectly causing persons of any

1 particular race, creed, color, sex, sexual orientation, national
2 origin, or with any sensory, mental, or physical disability, or the
3 use of a trained dog guide or service animal by a person with a
4 disability, to be treated as not welcome, accepted, desired, or
5 solicited.

6 ~~((15))~~ (17) "Honorably discharged veteran or military status"
7 means a person who is:

- 8 (a) A veteran, as defined in RCW 41.04.007; or
- 9 (b) An active or reserve member in any branch of the armed forces
10 of the United States, including the national guard, coast guard, and
11 armed forces reserves.

12 ~~((16))~~ (18) "Labor organization" includes any organization
13 which exists for the purpose, in whole or in part, of dealing with
14 employers concerning grievances or terms or conditions of employment,
15 or for other mutual aid or protection in connection with employment.

16 ~~((17))~~ (19) "Marital status" means the legal status of being
17 married, single, separated, divorced, or widowed.

18 ~~((18))~~ (20) "National origin" includes "ancestry."

19 ~~((19))~~ (21) "Person" includes one or more individuals,
20 partnerships, associations, organizations, corporations,
21 cooperatives, legal representatives, trustees and receivers, or any
22 group of persons; it includes any owner, lessee, proprietor, manager,
23 agent, or employee, whether one or more natural persons; and further
24 includes any political or civil subdivisions of the state and any
25 agency or instrumentality of the state or of any political or civil
26 subdivision thereof.

27 ~~((20))~~ (22) "Premises" means the interior or exterior spaces,
28 parts, components, or elements of a building, including individual
29 dwelling units and the public and common use areas of a building.

30 ~~((21))~~ (23) "Real estate transaction" includes the sale,
31 appraisal, brokering, exchange, purchase, rental, or lease of real
32 property, transacting or applying for a real estate loan, or the
33 provision of brokerage services.

34 ~~((22))~~ (24) "Real property" includes buildings, structures,
35 dwellings, real estate, lands, tenements, leaseholds, interests in
36 real estate cooperatives, condominiums, and hereditaments, corporeal
37 and incorporeal, or any interest therein.

38 ~~((23))~~ (25) "Respondent" means any person accused in a
39 complaint or amended complaint of an unfair practice in a real estate
40 transaction.

1 ~~((24))~~ (26) "Service animal" means any dog or miniature horse,
2 as discussed in RCW 49.60.214, that is individually trained to do
3 work or perform tasks for the benefit of an individual with a
4 disability, including a physical, sensory, psychiatric, intellectual,
5 or other mental disability. The work or tasks performed by the
6 service animal must be directly related to the individual's
7 disability. Examples of work or tasks include, but are not limited
8 to, assisting individuals who are blind or have low vision with
9 navigation and other tasks, alerting individuals who are deaf or hard
10 of hearing to the presence of people or sounds, providing nonviolent
11 protection or rescue work, pulling a wheelchair, assisting an
12 individual during a seizure, alerting individuals to the presence of
13 allergens, retrieving items such as medicine or the telephone,
14 providing physical support and assistance with balance and stability
15 to individuals with mobility disabilities, and helping persons with
16 psychiatric and neurological disabilities by preventing or
17 interrupting impulsive or destructive behaviors. The crime deterrent
18 effects of an animal's presence and the provision of emotional
19 support, well-being, comfort, or companionship do not constitute work
20 or tasks. This subsection does not apply to RCW 49.60.222 through
21 49.60.227 with respect to housing accommodations or real estate
22 transactions.

23 ~~((25))~~ (27) "Sex" means gender.

24 ~~((26))~~ (28) "Sexual orientation" means heterosexuality,
25 homosexuality, bisexuality, and gender expression or identity. As
26 used in this definition, "gender expression or identity" means having
27 or being perceived as having a gender identity, self-image,
28 appearance, behavior, or expression, whether or not that gender
29 identity, self-image, appearance, behavior, or expression is
30 different from that traditionally associated with the sex assigned to
31 that person at birth.

32 **Sec. 3.** RCW 49.60.215 and 2018 c 176 s 3 are each amended to
33 read as follows:

34 (1) It shall be an unfair practice for any person or the person's
35 agent or employee to commit an act which directly or indirectly
36 results in any distinction, restriction, or discrimination, or the
37 requiring of any person to pay a larger sum than the uniform rates
38 charged other persons, or the refusing or withholding from any person
39 the admission, patronage, custom, presence, frequenting, dwelling,

1 staying, or lodging in any place of public resort, accommodation,
2 assemblage, or amusement, except for conditions and limitations
3 established by law and applicable to all persons, regardless of race,
4 creed, color, national origin, sexual orientation, sex, honorably
5 discharged veteran or military status, status as a mother
6 breastfeeding her child, the presence of any sensory, mental, or
7 physical disability, or the use of a trained dog guide or service
8 animal by a person with a disability: PROVIDED, That this section
9 shall not be construed to require structural changes, modifications,
10 or additions to make any place accessible to a person with a
11 disability except as otherwise required by law: PROVIDED, That
12 behavior or actions constituting a risk to property or other persons
13 can be grounds for refusal and shall not constitute an unfair
14 practice.

15 (2)(a) Subject to the requirements of (b) of this subsection, it
16 is an unfair practice for a place of public resort, accommodation,
17 assemblage, or amusement that charges for admission, to deny
18 complimentary admission for one caregiver accompanying a person with
19 a disability who pays admission. If the place of public resort,
20 accommodation, assemblage, or amusement provides seating to people
21 who pay admission, the caregiver shall be provided one accompanying
22 seat, removable adjacent chair, or a space to stand in reasonable
23 proximity to the patron with a disability which may or may not have a
24 view of the event and may or may not have an associated ticket.

25 (b) The caregiver must supply essential help for basic activities
26 of daily living as defined in RCW 49.60.040. The caregiver or the
27 person with a disability must affirmatively make the request for
28 complimentary admission and assert that the companion is a caregiver
29 that performs essential help for basic activities of daily living in
30 order to qualify for this protection.

31 (c) When it is not obvious what service a caregiver provides,
32 only limited inquiries are allowed. Staff may ask two questions: (i)
33 Is the caregiver required because of a disability? and (ii) what
34 essential help for basic activities of daily living does the
35 caregiver provide? Staff cannot ask about the person's disability,
36 require medical documentation, require a special identification card
37 or training documentation, or ask that the caregiver demonstrate the
38 ability to perform the work or task.

39 (d) An establishment may not maintain additional purchase
40 restrictions that unnecessarily burden the enjoyment of the person

1 with a disability or his or her caregiver's access including, but not
2 limited to: Requiring a caregiver's admission ticket, pass,
3 authorization, or other instrument used to obtain admission, to be
4 picked up in person at the box office; requiring a caregiver to be
5 physically present when admission is purchased; requiring caregiver
6 admission be requested at the time the ticket purchase is made; or
7 prohibiting a caregiver from accessing establishment facilities or
8 attractions. This subsection (2)(d) is not intended to require an
9 establishment to offer complimentary caregiver admission through
10 online ticket sales.

11 (e) This subsection (2) does not apply to establishments that
12 provide housing or lodging for transient guests.

13 (f) The complimentary caregiver admission ticket may not be
14 resold. The complimentary ticket may be used only by the caregiver
15 accompanying the paying patron with the disability.

16 (g) Nothing in this section shall be construed to prohibit an
17 establishment from maintaining and enforcing reasonable policies
18 regarding conduct or behavior at or in connection with their venue.

19 **Sec. 4.** RCW 49.60.214 and 2018 c 176 s 4 are each amended to
20 read as follows:

21 (1) It shall be a civil infraction under chapter 7.80 RCW for any
22 person to misrepresent an animal as a service animal. A violation of
23 this section occurs when a person:

24 (a) Expressly or impliedly represents that an animal is a service
25 animal as defined in RCW 49.60.040 for the purpose of securing the
26 rights or privileges afforded disabled persons accompanied by service
27 animals set forth in state or federal law; and

28 (b) Knew or should have known that the animal in question did not
29 meet the definition of a service animal.

30 (2)(a) An enforcement officer as defined under RCW 7.80.040 may
31 investigate and enforce this section by making an inquiry of the
32 person accompanied by the animal in question and issuing a civil
33 infraction. Refusal to answer the questions allowable under (b) of
34 this subsection shall create a presumption that the animal is not a
35 service animal and the enforcement officer may issue a civil
36 infraction and require the person to remove the animal from the place
37 of public accommodation.

38 (b) An enforcement officer or place of public accommodation shall
39 not ask about the nature or extent of a person's disability, but may

1 make two inquiries to determine whether an animal qualifies as a
2 service animal. An enforcement officer or place of public
3 accommodation may ask if the animal is required because of a
4 disability and what work or task the animal has been trained to
5 perform. An enforcement officer or place of public accommodation
6 shall not require documentation, such as proof that the animal has
7 been certified, trained, or licensed as a service animal, or require
8 that the service animal demonstrate its task. Generally, an
9 enforcement officer or place of public accommodation may not make
10 these inquiries about a service animal when it is readily apparent
11 that an animal is trained to do work or perform tasks for a person
12 with a disability, such as a dog is observed guiding a person who is
13 blind or has low vision, pulling a person's wheelchair, or providing
14 assistance with stability or balance to a person with an observable
15 mobility disability.

16 (3) A place of public accommodation shall make reasonable
17 modifications in policies, practices, or procedures to permit the use
18 of a miniature horse by an individual with a disability in accordance
19 with the definition of a service animal under RCW 49.60.040(~~(24)~~),
20 if the miniature horse has been individually trained to do work or
21 perform tasks for the benefit of the individual with a disability. In
22 determining whether reasonable modifications in policies, practices,
23 or procedures can be made to allow a miniature horse into a facility,
24 a place of public accommodation shall act in accordance with all
25 applicable laws and regulations.

26 NEW SECTION. **Sec. 5.** If any provision of this act or its
27 application to any person or circumstance is held invalid, the
28 remainder of the act or the application of the provision to other
29 persons or circumstances is not affected."

SSB 5487 - S AMD 122
By Senator Padden

NOT CONSIDERED 12/23/2019

30 On page 1, line 2 of the title, after "amusement;" strike the
31 remainder of the title and insert "amending RCW 49.60.040, 49.60.215,
32 and 49.60.214; and creating a new section."

EFFECT: Removes the word "any" from page 8 line 13. Clarifies that it is not an unfair practice for an establishment to implement and enforce reasonable policies on conduct and behavior at their venue.

--- END ---